

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN SENATE MAY 27, 2011

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 13, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 586

**Introduced by Senator Pavley
(Coauthor: Senator Alquist)**

February 17, 2011

An act to add Sections 953.5 and 14409.5 to the Financial Code, and to amend Section 368 of the Penal Code, relating to banks and credit unions.

LEGISLATIVE COUNSEL'S DIGEST

SB 586, as amended, Pavley. Banks and credit unions: signature stamps.

Existing law, the Banking Law, regulates the organization and operations of state-organized banks, and the California Credit Union Law regulates the organization and operation of credit unions, the willful violation of which is a crime. Existing law does not regulate the issuance or use of a signature stamp in financial transactions.

This bill would define "signature stamp" and regulate the issuance of a signature stamp by a state-organized bank or credit union to an accountholder and the use of the signature stamp by the accountholder in financial transactions with a bank or credit union. The bill would

require a stampholder to report a lost or stolen signature stamp to the bank or credit union, as specified.

Existing law prohibits various types of elder abuse, punishable by incarceration, fines, or both incarceration and fines, including imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, for specified types of abuse involving theft, embezzlement, forgery, fraud, or identity theft.

This bill would increase the amount of each of the fines otherwise imposed for the existing law offenses, and would provide that the additional fine amount be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense. The bill would make changes to conform those provisions to changes made in AB 109 of the 2011–12 Regular Session. The bill would provide for restitution for a violation of these provisions committed through use of a signature stamp.

Because this bill would create new crimes, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 953.5 is added to the Financial Code, to
- 2 read:
- 3 953.5. (a) As used in this section, “signature stamp” means a
- 4 rubber or other synthetic stamp or device that is used to accurately
- 5 imitate the signature of an individual. Nothing in this section shall
- 6 limit the use of signature stamps issued by a bank prior to the
- 7 enactment of this section.
- 8 (b) A bank shall only issue a signature stamp to an existing
- 9 accountholder if either (1) the accountholder is present to request
- 10 the stamp and an employee of the bank witnesses and
- 11 acknowledges in writing that the signature stamp was requested
- 12 by the stampholder, or (2) an accountholder is unable to physically
- 13 come into a bank due to disability, the accountholder provides a

1 letter from a physician attesting to the physical limitation, and the
2 requesting accountholder's signature has been notarized on an
3 appropriate form approved and issued by the bank.

4 (c) A bank that issues a signature stamp to an accountholder
5 shall inform the accountholder of the risks associated with loss,
6 theft, or misuse of the signature stamp, and his or her rights and
7 responsibilities as a stamp holder, including, but not limited to, the
8 responsibility to review the account frequently and report any
9 unauthorized transactions promptly, and to report a lost or stolen
10 signature stamp as quickly as possible, upon the discovery that it
11 has been lost or stolen. *Nothing in this subdivision shall be*
12 *construed to limit or expand any civil liabilities that may exist*
13 *between a bank and an individual customer.*

14 (d) A bank shall not honor a request to open a new account that
15 is received by mail from a signature stamp holder.

16 (e) Any person who uses a signature stamp when committing
17 a violation of subdivision (d) or (e) of Section 368 of the Penal
18 Code shall, in addition to the penalties set forth therein, be liable
19 for restitution of all funds fraudulently obtained thereby, including
20 the monetary value of any goods or services so obtained.

21 (f) This section shall apply only to a natural person with respect
22 to his or her personal ~~account~~ *accounts, including, but not limited*
23 *to, those held in trust*, and shall not apply to a natural person acting
24 in the capacity of a representative or an agent of an entity that is
25 not a natural person.

26 SEC. 2. Section 14409.5 is added to the Financial Code, to
27 read:

28 14409.5. (a) As used in this section, "signature stamp" means
29 a rubber or other synthetic stamp or device that is used to accurately
30 imitate the signature of an individual. Nothing in this section shall
31 limit the use of signature stamps issued by a credit union prior to
32 the enactment of this section.

33 (b) A credit union shall only issue a signature stamp to an
34 existing accountholder if either (1) the accountholder is present to
35 request the stamp, and an employee of the credit union witnesses
36 and acknowledges in writing that the signature stamp was requested
37 by the stamp holder, or (2) an accountholder is unable to physically
38 come into a credit union due to disability, the accountholder
39 provides a letter from a physician attesting to the physical
40 limitation, and the requesting accountholder's signature has been

1 notarized on an appropriate form approved and issued by the credit
2 union.

3 (c) A credit union that issues a signature stamp to an
4 accountholder shall inform the accountholder of the risks associated
5 with loss, theft, or misuse of the signature stamp, and his or her
6 rights and responsibilities as a stamp holder, including, but not
7 limited to, the responsibility to review the account frequently and
8 report any unauthorized transactions promptly, and to report a lost
9 or stolen signature stamp as quickly as possible, upon the discovery
10 that it has been lost or stolen. *Nothing in this subdivision shall be*
11 *construed to limit or expand any civil liabilities that may exist*
12 *between a credit union and an individual customer.*

13 (d) A credit union shall not honor a request to open a new
14 account that is received by mail from a signature stamp holder.

15 (e) Any person who uses a signature stamp when committing
16 a violation of subdivision (d) or (e) of Section 368 of the Penal
17 Code shall, in addition to the penalties set forth therein, be liable
18 for restitution of all funds fraudulently obtained thereby, including
19 the monetary value of any goods or services so obtained.

20 (f) This section shall apply only to a natural person with respect
21 to his or her personal ~~account~~ accounts, including, but not limited
22 to, those held in trust, and shall not apply to a natural person acting
23 in the capacity of a representative or an agent of an entity that is
24 not a natural person.

25 SEC. 3. Section 368 of the Penal Code is amended to read:

26 368. (a) The Legislature finds and declares that crimes against
27 elders and dependent adults are deserving of special consideration
28 and protection, not unlike the special protections provided for
29 minor children, because elders and dependent adults may be
30 confused, on various medications, mentally or physically impaired,
31 or incompetent, and therefore less able to protect themselves, to
32 understand or report criminal conduct, or to testify in court
33 proceedings on their own behalf.

34 (b) (1) Any person who knows or reasonably should know that
35 a person is an elder or dependent adult and who, under
36 circumstances or conditions likely to produce great bodily harm
37 or death, willfully causes or permits any elder or dependent adult
38 to suffer, or inflicts thereon unjustifiable physical pain or mental
39 suffering, or having the care or custody of any elder or dependent
40 adult, willfully causes or permits the person or health of the elder

1 or dependent adult to be injured, or willfully causes or permits the
2 elder or dependent adult to be placed in a situation in which his or
3 her person or health is endangered, is punishable by imprisonment
4 in a county jail not exceeding one year, or by a fine not to exceed
5 twelve thousand dollars (\$12,000), any amount in excess of six
6 thousand dollars (\$6,000) of which shall be allocated to the adult
7 protective services agency, or equivalent elder abuse prevention
8 agency, of the county prosecuting the offense, or by both that fine
9 and imprisonment, or by imprisonment in the state prison for two,
10 three, or four years.

11 (2) If in the commission of an offense described in paragraph
12 (1), the victim suffers great bodily injury, as defined in Section
13 12022.7, the defendant shall receive an additional term in the state
14 prison as follows:

15 (A) Three years if the victim is under 70 years of age.

16 (B) Five years if the victim is 70 years of age or older.

17 (3) If in the commission of an offense described in paragraph
18 (1), the defendant proximately causes the death of the victim, the
19 defendant shall receive an additional term in the state prison as
20 follows:

21 (A) Five years if the victim is under 70 years of age.

22 (B) Seven years if the victim is 70 years of age or older.

23 (c) Any person who knows or reasonably should know that a
24 person is an elder or dependent adult and who, under circumstances
25 or conditions other than those likely to produce great bodily harm
26 or death, willfully causes or permits any elder or dependent adult
27 to suffer, or inflicts thereon unjustifiable physical pain or mental
28 suffering, or having the care or custody of any elder or dependent
29 adult, willfully causes or permits the person or health of the elder
30 or dependent adult to be injured or willfully causes or permits the
31 elder or dependent adult to be placed in a situation in which his or
32 her person or health may be endangered, is guilty of a
33 misdemeanor. A second or subsequent violation of this subdivision
34 is punishable by a fine not to exceed four thousand dollars (\$4,000),
35 any amount in excess of two thousand dollars (\$2,000) of which
36 shall be allocated to the adult protective services agency, or
37 equivalent elder abuse prevention agency, of the county prosecuting
38 the offense, or by imprisonment in a county jail not to exceed one
39 year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950), and by a fine not exceeding two thousand dollars (\$2,000), any amount in excess of one thousand dollars (\$1,000) of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950), and by a fine not exceeding two thousand dollars (\$2,000), any amount in excess of one thousand dollars (\$1,000) of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

1 (g) As used in this section, “elder” means any person who is 65
2 years of age or older.

3 (h) As used in this section, “dependent adult” means any person
4 who is between 18 and 64 years of age, who has physical or mental
5 limitations which restrict his or her ability to carry out normal
6 activities or to protect his or her rights, including, but not limited
7 to, persons who have physical or developmental disabilities or
8 whose physical or mental abilities have diminished because of
9 age. “Dependent adult” includes any person between 18 and 64
10 years of age who is admitted as an inpatient to a 24-hour health
11 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
12 Health and Safety Code.

13 (i) As used in this section, “caretaker” means any person who
14 has the care, custody, or control of, or who stands in a position of
15 trust with, an elder or a dependent adult.

16 (j) Nothing in this section shall preclude prosecution under both
17 this section and Section 187 or 12022.7 or any other provision of
18 law. However, a person shall not receive an additional term of
19 imprisonment under both paragraphs (2) and (3) of subdivision
20 (b) for any single offense, nor shall a person receive an additional
21 term of imprisonment under both Section 12022.7 and paragraph
22 (2) or (3) of subdivision (b) for any single offense.

23 (k) In any case in which a person is convicted of violating these
24 provisions, the court may require him or her to receive appropriate
25 counseling as a condition of probation. Any defendant ordered to
26 be placed in a counseling program shall be responsible for paying
27 the expense of his or her participation in the counseling program
28 as determined by the court. The court shall take into consideration
29 the ability of the defendant to pay, and no defendant shall be denied
30 probation because of his or her inability to pay.

31 SEC. 3.5. Section 368 of the Penal Code, as amended by
32 Section 336 of Chapter 15 of the Statutes of 2011, is amended to
33 read:

34 368. (a) The Legislature finds and declares that crimes against
35 elders and dependent adults are deserving of special consideration
36 and protection, not unlike the special protections provided for
37 minor children, because elders and dependent adults may be
38 confused, on various medications, mentally or physically impaired,
39 or incompetent, and therefore less able to protect themselves, to

1 understand or report criminal conduct, or to testify in court
2 proceedings on their own behalf.

3 (b) (1) Any person who knows or reasonably should know that
4 a person is an elder or dependent adult and who, under
5 circumstances or conditions likely to produce great bodily harm
6 or death, willfully causes or permits any elder or dependent adult
7 to suffer, or inflicts thereon unjustifiable physical pain or mental
8 suffering, or having the care or custody of any elder or dependent
9 adult, willfully causes or permits the person or health of the elder
10 or dependent adult to be injured, or willfully causes or permits the
11 elder or dependent adult to be placed in a situation in which his or
12 her person or health is endangered, is punishable by imprisonment
13 in a county jail not exceeding one year, or by a fine not to exceed
14 twelve thousand dollars (\$12,000), any amount in excess of six
15 thousand dollars (\$6,000) of which shall be allocated to the adult
16 protective services agency, or equivalent elder abuse prevention
17 agency, of the county prosecuting the offense, or by both that fine
18 and imprisonment, or by imprisonment in the state prison for two,
19 three, or four years.

20 (2) If in the commission of an offense described in paragraph
21 (1), the victim suffers great bodily injury, as defined in Section
22 12022.7, the defendant shall receive an additional term in the state
23 prison as follows:

24 (A) Three years if the victim is under 70 years of age.

25 (B) Five years if the victim is 70 years of age or older.

26 (3) If in the commission of an offense described in paragraph
27 (1), the defendant proximately causes the death of the victim, the
28 defendant shall receive an additional term in the state prison as
29 follows:

30 (A) Five years if the victim is under 70 years of age.

31 (B) Seven years if the victim is 70 years of age or older.

32 (c) Any person who knows or reasonably should know that a
33 person is an elder or dependent adult and who, under circumstances
34 or conditions other than those likely to produce great bodily harm
35 or death, willfully causes or permits any elder or dependent adult
36 to suffer, or inflicts thereon unjustifiable physical pain or mental
37 suffering, or having the care or custody of any elder or dependent
38 adult, willfully causes or permits the person or health of the elder
39 or dependent adult to be injured or willfully causes or permits the
40 elder or dependent adult to be placed in a situation in which his or

her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed four thousand dollars (\$4,000), any amount in excess of ~~six thousand dollars (\$6,000)~~ *two thousand dollars (\$2,000)* of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or pursuant to subdivision (h) of Section 1170 for two, three, or four years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950), and by a fine not exceeding two thousand dollars (\$2,000), any amount in excess of one thousand dollars (\$1,000) of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or pursuant to subdivision (h) of Section 1170 for two, three, or four years when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950), and by a fine not exceeding two thousand dollars (\$2,000), any amount in excess of one thousand dollars (\$1,000) of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the

1 offense, by imprisonment in a county jail not exceeding one year,
2 or by both that fine and imprisonment, when the moneys, labor,
3 goods, services, or real or personal property taken or obtained is
4 of a value not exceeding nine hundred fifty dollars (\$950).

5 (f) Any person who commits the false imprisonment of an elder
6 or a dependent adult by the use of violence, menace, fraud, or
7 deceit is punishable by imprisonment pursuant to subdivision (h)
8 of Section 1170 for two, three, or four years.

9 (g) As used in this section, “elder” means any person who is 65
10 years of age or older.

11 (h) As used in this section, “dependent adult” means any person
12 who is between 18 and 64 years of age, who has physical or mental
13 limitations which restrict his or her ability to carry out normal
14 activities or to protect his or her rights, including, but not limited
15 to, persons who have physical or developmental disabilities or
16 whose physical or mental abilities have diminished because of
17 age. “Dependent adult” includes any person between 18 and 64
18 years of age who is admitted as an inpatient to a 24-hour health
19 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
20 Health and Safety Code.

21 (i) As used in this section, “caretaker” means any person who
22 has the care, custody, or control of, or who stands in a position of
23 trust with, an elder or a dependent adult.

24 (j) Nothing in this section shall preclude prosecution under both
25 this section and Section 187 or 12022.7 or any other provision of
26 law. However, a person shall not receive an additional term of
27 imprisonment under both paragraphs (2) and (3) of subdivision
28 (b) for any single offense, nor shall a person receive an additional
29 term of imprisonment under both Section 12022.7 and paragraph
30 (2) or (3) of subdivision (b) for any single offense.

31 (k) In any case in which a person is convicted of violating these
32 provisions, the court may require him or her to receive appropriate
33 counseling as a condition of probation. Any defendant ordered to
34 be placed in a counseling program shall be responsible for paying
35 the expense of his or her participation in the counseling program
36 as determined by the court. The court shall take into consideration
37 the ability of the defendant to pay, and no defendant shall be denied
38 probation because of his or her inability to pay.

39 SEC. 4. Section 3.5 of this bill incorporates amendments to
40 Section 368 of the Penal Code proposed by both this bill and AB

1 109, which has been chaptered but is not operative. Section 3.5
2 shall become operative only if (1) this bill is enacted and becomes
3 effective on or before January 1, 2012, (2) this bill amends Section
4 368 of the Penal Code, and (3) AB 109 becomes operative, in
5 which case Section 368 of the Penal Code, as amended by Section
6 3 of this bill, shall remain operative only until the operative date
7 of AB 109, at which time Section 3.5 of this bill shall become
8 operative.

9 SEC. 5. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.